

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150536
	:	TRIAL NO. B-1100435
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
VAN JOHNSON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Van Johnson presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court's judgment overruling his motion to withdraw his guilty pleas. We affirm the court's judgment.

Johnson was convicted in 2012 upon guilty pleas to two counts of rape. He failed to perfect a timely appeal of his convictions. But in 2014, he challenged his convictions by filing with the common pleas court a Crim.R. 32.1 motion seeking to withdraw his pleas on the ground that the pleas were the involuntary, unknowing, and unintelligent product of his trial counsel's ineffectiveness.

We note that the record before us on appeal does include a certified, file-stamped copy of a transcript of the proceedings at Johnson's plea hearing. *See* App.R. 9(A)(1) and 9(B). An indigent offender is entitled to a transcript of the proceedings leading to his conviction if he has pending either a direct appeal or a postconviction proceeding. *State ex rel. Partee v. McMahon*, 175 Ohio St. 243, 248, 193 N.E.2d 266

(1963); *State v. Hawkins*, 1st Dist. Hamilton No. C-74425, 1975 Ohio App. LEXIS 7551 (July 7, 1975). But Johnson neither timely appealed his convictions nor requested a transcript of the plea hearing for the common pleas court's decision on his Crim.R. 32.1 motion.

The common pleas court's decision overruling Johnson's motion to withdraw his guilty pleas was discretionary. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph two of the syllabus; *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813. And Johnson bore the burden of demonstrating that withdrawing his pleas was necessary "to correct manifest injustice." Crim.R. 32.1; *Smith* at paragraph one of the syllabus. Thus, implicit in the court's decision overruling Johnson's motion was its determination that he had failed to sustain that burden. And that determination, in the absence of a transcript of the plea hearing, cannot be said to have been arbitrary, unconscionable, or the product of an unsound reasoning process. See *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an "abuse of discretion"). Therefore, the court did not abuse its discretion in overruling the motion.

Accordingly, we overrule the assignment of error and affirm the judgment of the common pleas court.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on April 26, 2017

per order of the court _____.

Presiding Judge